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S. W. PEEL.

FEBRUARY 25, 1896.—Committed to the Committee of the Whole House and ordered to be printed.

MR. DOOLITTLE, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 2684.]

The Committee on Indian Affairs, to whom was referred House bill 2684, having had the same under consideration, beg leave to submit the following report:

The bill provides that the Secretary of the Interior be directed to pay S. W. Peel \$5,000 out of the unexpended balance of what is known as the 35 per cent of the Old Settler Cherokee fund, now in the Treasury of the United States, for legal services rendered by the said Peel in defending certain contested claims filed in the Interior Department against that fund.

The Old Settler Cherokees are that part of the Cherokees in the Indian Territory that came West prior to the treaty of 1835. They were authorized under the treaty of 1846 to keep up their separate organization until all their unsettled business with the United States was closed. Having a large claim against the United States, in order to prepare for the prosecution of their said claim, by act of their council they set apart 35 per cent of whatever might be finally recovered on said claim to be used in defraying the expenses of such prosecution, and placed the management of the same in the hands of three of their number, called commissioners, of whom the most active was Joel M. Bryan, who looked continuously after it for over twenty years. In consequence of this long prosecution Mr. Bryan from time to time employed a great number of attorneys. As one would die or leave the case he would employ another in his stead. Such employment exhausted the entire 35 per cent set apart for that purpose. Finally the Supreme Court of the United States rendered judgment in favor of said Old Settler Cherokees for something over \$800,000. The 35 per cent of that amount set apart to pay the expenses of the prosecution was something over \$280,000.

The various attorneys at once filed their contracts and claims for payment out of the 35 per cent, which claims more than exhausted the entire amount. Mr. Bryan, knowing that some of the claimants had performed no service, and others little or none, employed Mr. Peel as attorney at law to oppose these various contested claims and protect the funds of the Indians. His first contract was to pay Mr. Peel \$5,000, provided the claim of the estate of E. John Ellis, which was over \$16,000, was reduced \$5,000 or more; but before the trial came off Mr. Peel agreed to defend all contested claims without additional compen-

sation. This he did. All the contested claims amounted in the aggregate to nearly \$400,000. Mr. Peel appeared before the honorable Commissioner of Indian Affairs, made informal oral argument, and filed a very elaborate brief in writing. In his decision the Commissioner rejected and disallowed them all, except the one in favor of the estate of E. John Ellis, which he reduced from \$16,000 to \$4,000. So instead of its being reduced \$5,000, as agreed in Mr. Peel's contract, it was reduced over \$12,000, a saving of that much to the Indians. All these cases were appealed to the Secretary of the Interior, and were reargued. Mr. Peel again appeared against all the contested claims, and, upon a final decision of the Secretary, the claim of the estate of E. John Ellis was left at \$4,000, the same amount as found by the Commissioner. Many of the others the Secretary disapproved and rejected entirely. Out of the entire amount claimed, being about \$400,000, the Secretary on the final decision allowed only \$26,000, which made a saving to the Indians of about \$375,000.

The sworn statement of Mr. Peel, hereto attached as a part of this report, shows clearly that he was employed by the commissioners, Joel L. Baugh and Joel M. Bryan, to defend all the contested claims. Also the letter of the Secretary of the Interior, which is also attached as a part of this report, shows conclusively that Mr. Peel appeared in his Department in opposition to the contested claims and rendered good service. The statute making the appropriation only authorized the Secretary to adjust and pay out of the 35 per cent such attorneys' fees as were just and equitably due for services rendered in the prosecution of the original suit. Mr. Peel's employment and service not being for the prosecution of the suit, but for defending contested claims against the funds out of which to pay attorneys, therefore he could not, under the technical wording of the statute, pay Mr. Peel for his service.

Finding that Mr. Peel rendered the Indians good service, and contributed to saving for them about \$100,000 of the 35 per cent, and that he fulfilled his contract and more, and that he can not be paid without the legislation proposed in the bill, your committee recommend that the bill pass without amendment.

DISTRICT OF COLUMBIA, Washington, D. C.:

I, S. W. Peel, after being duly sworn, depose and say:

That the Old Settler Cherokee Indians are that part of the Cherokee tribe of Indians that emigrated west of the Mississippi River prior to the treaty of 1835 and settled in what is now the Indian Territory. That said Indians claimed that under certain treaties the United States was indebted to them in a large sum of money. That on or about the — day of —, 1890 or 1891, Congress passed an act authorizing said Indians to bring suit against the Government, in the courts, for their said claim. That before this date, by various resolutions of their council, they set apart 35 per cent of whatever might ultimately be recovered to defray the expenses for the prosecution of their said claim, and appointed three commissioners of their number, the most prominent and active one being Joel M. Bryan. Said council placed this 35 per cent in the hands of these commissioners, with authority to use the same, or so much as might be necessary, to employ attorneys to prosecute their said claim.

The prosecution continued for over twenty years, and during that time the said Bryan employed, from time to time, a great many different attorneys. That finally the Supreme Court of the United States rendered judgment against the United States in favor of said Old Settler Cherokee Indians for something over \$800,000. Soon thereafter Congress made the proper appropriation to pay said judgment, and in the act authorized the Commissioner of Indian Affairs to withhold enough from distribution to pay for such legal services and expenses as were justly due for the prose-

cution of the suit. Soon thereafter the various attorneys who claimed compensation for services rendered in the prosecution of said suit filed their claims before the Commissioner of Indian Affairs, to be paid out of the 35 per cent set aside by the Old Settler council for that purpose, many of which claims were opposed and contested by J. M. Bryan, the commissioner for said Indians; and, to aid in conducting the defense, he and one J. L. Baugh, who was acting with him as assistant commissioner, employed me as an attorney in the case, and agreed to pay me \$5,000 upon condition that I succeeded in reducing a claim of the estate of E. John Ellis \$5,000 or more, said claim being for something over \$16,000. Then afterwards, and before the trial came on, I agreed to defend all the contested claims without additional compensation. The claims that were filed and contested are as follows:

J. J. Newall claimed 2½ per cent, or about	\$20, 000
Mrs. Belva Lockwood claimed 10 per cent, or about.....	80, 000
Richard Wintersmith claimed 25 per cent, or about.....	200, 000
J. M. Douglas claimed	2, 500
S. C. Henningway claimed about.....	2, 500
W. S. Peabody claimed 8 per cent, or about.....	64, 000
E. John Ellis estate claimed 2 per cent, or about.....	16, 000

Aggregating 385, 000

This amount exceeds the 35 per cent available for that purpose. In accordance with my contract I appeared before the honorable Commissioner of Indian Affairs and filed my brief in the case. The Commissioner, after due consideration, rejected and disallowed the claim of J. J. Newall, Mrs. Belva Lockwood, Richard Wintersmith, J. M. Douglas, W. S. Peabody, and, as I remember, the claim of Mr. Henningway. On the claim of the estate of E. John Ellis he allowed \$4,000. The parties appealed to the Secretary of the Interior. I again appeared and made an oral argument before the Secretary and the Hon. John I. Hall, Assistant Attorney-General of the Interior Department. The claimants also appeared, some in person and others by attorneys. After due consideration the Secretary awarded as follows:

To Newall & Lockwood.....	\$10, 000
To W. S. Peabody	8, 000
To J. M. Douglas	2, 500
To S. C. Henningway	1, 500
To E. John Ellis estate.....	4, 000

He disallowed the claim of Richard Wintersmith.

Total allowed..... 26, 000
Leaving disallowed on said claims, \$359,000.

That after the payment of the \$26,000 allowed as above, and the uncontested claims, there remains unexpended of the 35 per cent something near \$100,000 that will be paid out to the Old Settler Cherokees, if not otherwise used. Out of this unexpended balance I ask to be paid for my services. The claim of the estate of E. John Ellis was reduced over \$12,000, and under that item alone the amount claimed by me would be due. I further state that I have not been paid my said fee, or any part thereof.

S. W. PEEL.

Subscribed and sworn to before me this 5th day of February, 1896.

[SEAL.]

DAVID E. MOORE, *Notary Public*.

DEPARTMENT OF THE INTERIOR,
Washington, February 4, 1896.

SIR: I have the honor to acknowledge the receipt of your communication of 24th instant and accompanying H. H., "A bill for relief of S. W. Peel for services rendered the Old Settler Cherokees."

In response thereto I transmit herewith copy of a communication of 30th instant from the Commissioner of Indian Affairs, to whom your letter was referred, and you are further advised that Mr. Peel appeared before the Department in opposition to the allowance of the contested claim.

Very respectfully,

HOKE SMITH, *Secretary*.

Hon. W. H. DOOLITTLE,
House of Representatives.